



Protecting Historic Properties

A Citizen's Guide to
Section 106 Review



ADVISORY COUNCIL ON
HISTORIC PRESERVATION

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ABOUT THE COUNCIL

The Advisory Council on Historic Preservation serves as a primary policy advisor to the President and Congress on historic preservation matters. An independent Federal agency, the Council was established by the National Historic Preservation Act in 1966.

Responsibilities of the 20-member body include overseeing implementation of Section 106 review, which mandates Federal consideration of historic properties when planning projects, and advising other Federal agencies on carrying out their programs and policies with consideration to preserving the Nation's historic resources.

Daily oversight of Section 106 review is handled by a small professional staff located in Washington, DC, and Denver.

Washington, DC

April 2001

(Cover photograph credits, clockwise from top left: Marcia Axtmann Smith; Patricia Chapman; Marcia Axtmann Smith; E. Richard Hart; Rebecca Rodgers)

**Proud of your heritage?
Value the things that
reflect your community's
history? You should know
about Section 106 review,**

an important tool you can use to influence Federal decisions. By law, you have a voice when Federal actions will affect properties that qualify for the National Register of Historic Places, the Nation's official list of historic properties.

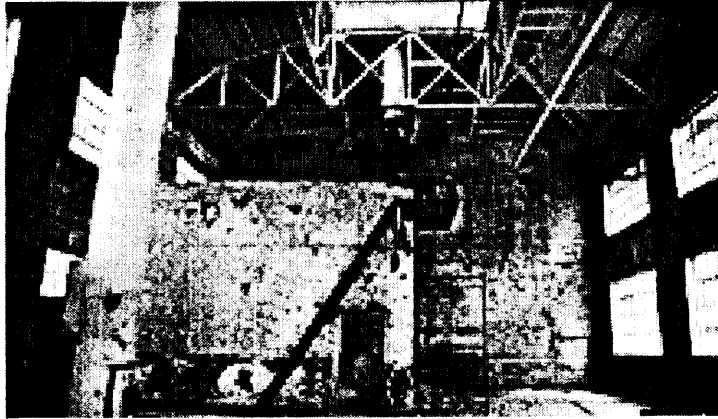
This guide from the Advisory Council on Historic Preservation, the Federal agency charged with historic preservation leadership within the Federal Government, will help you make your voice heard.

Each year, the Federal Government is involved in a variety of projects that impact historic properties. For example, the Federal Highway Administration works with States on road improvements, the Department of Housing and Urban Development grants funds to cities to rebuild communities, and the General Services Administration builds and leases Federal office space.

Agencies like the Forest Service, the National Park Service, the Bureau of Land Management, the Department of Veterans Affairs, and the Defense agencies make decisions daily about the management of Federal buildings, parks, forests, and lands.

Less obvious Federal actions can also have repercussions on historic properties. A Corps of Engineers permit to build a boat dock or a housing development that affects wetlands may also impact fragile archeological sites. Likewise, a Federal Communications Commission license for cellular tower construction might compromise rural landscapes or properties valued by Indian tribes for traditional religious or cultural practices.

These and many other Federal actions can harm historic properties. Section 106 review is your opportunity to alert the Federal Government to the properties you value and to influence decisions about the Federal projects that affect them.



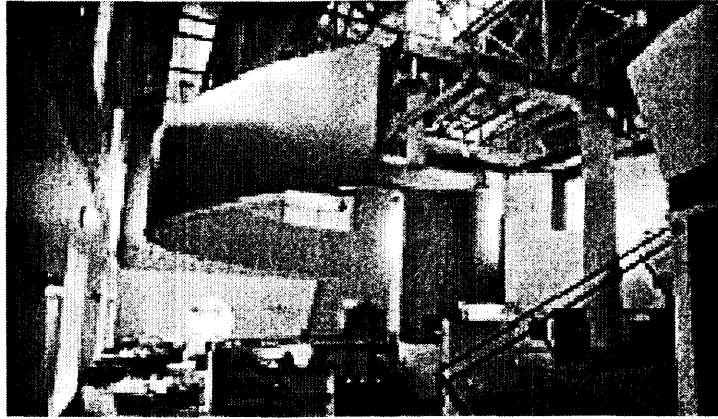
Before: A developer originally proposed demolishing the American Can Company industrial complex in Baltimore to make way for new retail development funded by the U.S. Department of Housing and Urban Development.

WHAT IS SECTION 106 REVIEW?

In the National Historic Preservation Act (NHPA), Congress established a comprehensive program to preserve the historical and cultural foundations of the Nation as a living part of community life. Section 106 of NHPA is crucial to that program, because it requires consideration of historic preservation in the multitude of Federal actions that take place nationwide. Section 106 requires Federal agencies to consider the effects of their actions on historic properties and provide the Council an opportunity to comment on Federal projects prior to implementation.

**Because of Section 106,
Federal agencies must
assume responsibility for the
consequences of their actions
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for their decisions.**

Section 106 review encourages, but does not mandate, preservation. Sometimes there is no way for a needed project to proceed without harming historic properties. Section 106 review does, however, ensure that preservation values are factored into Federal agency planning and decisions. Because of Section 106, Federal agencies must assume responsibility for the consequences of their actions and be publicly accountable for their decisions.



After: But more than 50 citizen groups opposed the project and used Section 106 review as a vehicle for making their views known. Ultimately, the historic industrial buildings were saved and rehabilitated for commercial use. (Photos courtesy of Pat Sommer, Struever Bros. Eccles & Rouse, Inc.)

UNDERSTANDING SECTION 106 REVIEW

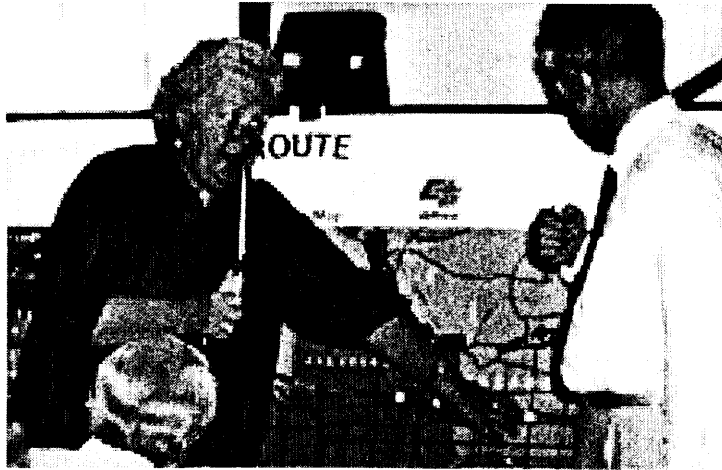
Regulations issued by the Council guide Section 106 review, specifying actions Federal agencies must take to meet their legal obligations. The regulations are published in the Code of Federal Regulations at 36 CFR Part 800 and can be found on the Council's Web site at www.achp.gov.

Federal agencies are responsible for initiating Section 106 review, most of which takes place between the agency and State and tribal officials. Appointed by the governor, the State Historic Preservation Officer (SHPO) coordinates the State's historic preservation program and consults with agencies during Section 106 review. Agencies also consult with officials of federally recognized Indian tribes (herewith, "tribe") when tribal lands or historic properties of significance to such tribes are involved. Some tribes have officially designated Tribal Historic Preservation Officers (THPOs), while others designate representatives to consult with agencies as needed. Contact information appears on the final pages of this guide.

To successfully complete Section 106 review, Federal agencies must:

- determine if Section 106 of NHPA applies to a given project and, if so, initiate the review;
- gather information to decide which properties in the project area are listed on or eligible for the National Register of Historic Places;

- determine how historic properties might be affected;
- explore alternatives to avoid or reduce harm to historic properties; and
- reach agreement with the SHPO/tribe (and the Council in some cases) on measures to deal with any adverse effects or obtain advisory comments from the Council, which are sent to the head of the agency.



*Citizens spoke out against Route 710, a controversial highway project in Pasadena, California, that would harm six historic districts, prompting the Council to issue strong comments to the Secretary of Transportation.
(Photo courtesy of Marcia Axtmann Smith)*

The National Register of Historic Places

The National Register of Historic Places is the Nation's official list of properties recognized for their significance in American history, architecture, archeology, engineering, and culture. It is administered by the National Park Service, which is part of the Department of the Interior. National Register properties include districts, sites, buildings, structures, and objects. They can be significant to a local community, a State, an Indian tribe, or the Nation as a whole.

In order to be considered during Section 106 review, a property must either be already listed on the National Register or be eligible for listing. A property is considered eligible when it meets specific criteria established by the National Park Service.

During Section 106 review, the Federal agency evaluates properties against those criteria and seeks the consensus of the SHPO and/or tribe regarding eligibility. (For more information, visit the National Register Web site at www.cr.nps.gov/nr/.)

What Is an Adverse Effect?

In Section 106 review, a project is considered to adversely affect a historic property if it may alter the characteristics that qualify the property for inclusion in the National Register in a manner that would diminish the *integrity* of the property. Integrity is the ability of a property to convey its significance, based on its location, design, setting, materials, workmanship, feeling, and association.

Adverse effects can be direct or indirect. They include reasonably foreseeable impacts that may occur later in time, be farther removed in distance, or be cumulative.

Typical examples of adverse effects are:

- physical destruction or damage
- alteration inconsistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (see www2.cr.nps.gov/tps/secstan1.htm for more information)
- relocation of the property
- change in the character of the property's use or setting
- introduction of incompatible visual, atmospheric, or audible elements
- neglect and deterioration
- transfer, lease, or sale out of Federal control without adequate preservation restrictions

When historic properties will be harmed, Section 106 review usually ends with a legally binding agreement that establishes how the Federal agency will address the adverse effects. In the few cases where this does not occur, and the Council issues advisory comments, the head of the Federal agency must consider the comments in making a final decision.

The point of Section 106 review is not to stop projects. It is to ensure that Federal agencies fully consider historic preservation issues and the views of the public during project planning.

DETERMINING FEDERAL INVOLVEMENT

If you are concerned about a proposed project and wondering whether Section 106 applies, you must first determine whether the Federal Government is involved. Will a Federal agency fund or carry out the project? Is a Federal permit, license, or approval needed? Section 106 applies only if a Federal agency is taking an action, so confirming Federal involvement is key.

Is There Federal Involvement?

Consider the possibilities:

- Is a Federally owned or controlled property involved, such as a military base, park, forest, office building, post office, or courthouse? Is the agency proposing a project on its land, or would it have to provide a right-of-way or other approval to a private company for a project such as a pipeline or mine?
- Is the project receiving Federal funds, grants, or loans? If it is a transportation project, frequent sources of funds are the Federal Highway Administration, the Federal Transit Administration, and the Federal Aviation Administration (for airport improvements).

Many local government projects receive funds from the Department of Housing and Urban Development. The Federal Emergency Management Agency provides funds for disaster relief.

- Does the project require a Federal permit, license, or other approval? Often housing developments impact wetlands, so a Corps of Engineers permit may be required. Airport projects frequently require approvals from the Federal Aviation Administration.

Many communications activities, including cellular tower construction, are licensed by the Federal Communications Commission. Hydropower and pipeline development requires approval from the Federal Energy Regulatory Commission. Creation of new bank branches must be approved by the Federal Deposit Insurance Corporation.

Sometimes Federal involvement is obvious. More often, the answer is not immediately apparent. If you have a question, contact the project sponsor to obtain additional information and to inquire about Federal involvement. All Federal agencies have Web sites, many listing regional or local contacts and information on major projects. The SHPO/tribe, State or local planning commissions, or statewide historic preservation organizations may also have project information.

Once you have identified the responsible Federal agency, write to the agency to request a project description and inquire about the status of project planning. Ask how the agency plans to comply with Section 106 and begin to voice your concerns. Keep the SHPO/tribe advised of your interest and contacts with the Federal agency.

Monitoring Federal Actions

The earlier you learn about proposed Federal actions, the greater your chance of influencing the outcome of Section 106 review.

- Learn more about the history of your neighborhood, city, or State. Join a local or statewide preservation, historical or archeological organization. These organizations are often the ones first contacted by Federal agencies.
- If there is a clearinghouse that distributes information about local, State, tribal, and Federal projects, make sure you or your organization is on their mailing list.
- Make the SHPO or tribe aware of your interest.
- Become more involved in State and local decision making. Ask about the applicability of Section 106 to projects under State, tribal, or local review. Does your State, tribe, or community have preservation laws in place? If so, become knowledgeable about and active in the implementation of these laws.
- Review the local newspaper for notices about projects being reviewed under other Federal statutes, especially the National Environmental Policy Act (NEPA). Under NEPA, a Federal agency must determine if its proposed actions will significantly impact the environment. Usually, if a Federal agency is analyzing a project's environmental impacts under NEPA, then it must also complete a Section 106 review.

WORKING WITH FEDERAL AGENCIES

Throughout Section 106 review, Federal agencies must consider the views of the public. This is particularly important when an agency is trying to identify historic properties that might be affected by a project and is considering ways to avoid or minimize harm.

In either case, agencies must give the public a chance to learn about the project and provide their views.



When the Bureau of Land Management was asked to approve a plan for mining in Imperial County, California, consultation under Section 106 provided the Quechan Tribe an opportunity to explain how the project would harm the Indian Pass-Running Man Area of Traditional Concern, a property of central importance to the tribe's culture. (Photo courtesy of Courtney Coyle)

How agencies publicize projects depends on the nature and complexity of the particular project, and the agency's public involvement procedures. Public meetings are often noted in local newspapers and on television and radio. A daily Government publication, the *Federal Register* (available at many public libraries and online at www.access.gpo.gov), has notices concerning projects, including those being reviewed under the National Environmental Policy Act (NEPA). Federal agencies often use NEPA public outreach for purposes of Section 106 review.

Federal agencies also frequently contact museums and historical societies directly to learn about historic properties and community concerns. Let these organizations know of your interest.

When the agency provides you with information, let the agency know if you disagree with its findings regarding what properties are eligible for the National Register of Historic Places or how the proposed project

may affect them. Tell the agency—in writing—about any important properties that you think have been overlooked or incorrectly evaluated. Be sure to provide documentation to support your views.

When the Federal agency releases information about project alternatives under consideration, make it aware of the options you believe would be most beneficial. To support alternatives that would preserve historic properties, be prepared to discuss costs and how well your preferred alternatives would meet project needs. Sharing success stories about the treatment or reuse of similar resources can be helpful.

Applicants for Federal assistance or permits, and their consultants, often undertake research and analyses on behalf of a Federal agency. Be prepared to make your interests and views known to them, but remember that the Federal agency is ultimately responsible for completing Section 106 review. Make sure that you also convey your concerns directly to the Federal agency.

INFLUENCING PROJECT OUTCOMES

In addition to seeking the views of the public, Federal agencies must actively consult with certain organizations and individuals during review. This interactive consultation is at the heart of Section 106 review.



Citizens and the local historical society were instrumental in convincing the Federal Highway Administration to relocate, rather than demolish, the historic King of Prussia Inn (circa 1740) in Pennsylvania. (Photo courtesy of MaryAnn Naber)

Consultation does not mandate a specific outcome. Rather, it is the process of seeking consensus about how project effects on historic properties should be handled. The organizations and individuals that Federal agencies must consult are called "consulting parties."

Consultation does not mandate a specific outcome.

To influence project outcomes, you may work through the consulting parties, particularly those who represent your interests. For instance, if you live within the local jurisdiction where a project is taking place, make sure to express your views on historic preservation issues to the local government officials who participate in consultation.

You or your organization, however, may want to take a more active role in Section 106 review, especially if you have a legal or economic interest in the project or the affected properties. You might also have an interest in the effects of the project as an individual, a business owner, or a member of a neighborhood

Who Are "Consulting Parties"?

The following parties are entitled to actively participate as consulting parties during Section 106 review:

- State Historic Preservation Officers;
- Indian tribes;
- Native Hawaiian organizations;
- Local governments; and
- Applicants for Federal assistance, permits, licenses, and other approvals.

Other individuals and organizations with a demonstrated interest in the project may participate in Section 106 review as consulting parties *"due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties."* Their participation is subject to approval by the responsible Federal agency.

association, preservation group, or other organization. Under these circumstances, you or your organization may write to the Federal agency asking to become a consulting party.



Local groups and organizations from across the Nation participated in consultation about the appropriate treatment of the 18th-century African Burial Ground, which was partially destroyed by the General Services Administration's construction of a Federal building in New York City. This commemorative mural was prepared by area school children. (Photo courtesy of Daniel Pagano)

When requesting consulting party status, explain why you believe your participation would be valuable to successful resolution. Since the SHPO/tribe will assist the Federal agency in deciding who will participate in the consultation, be sure to provide the SHPO/tribe with a copy of your letter to the agency.

Consulting party status entitles you to share your views, offer ideas, and consider possible solutions together with the Federal agency and other consulting parties.

The Federal agency makes the ultimate decision. However, if you are denied consulting party status, you may contact the Council to request a review of the matter.

Consulting party status entitles you to share your views, receive and review pertinent information, offer ideas, and consider possible solutions together with the Federal agency and other consulting parties. It is up to you to decide how actively you want to participate in consultation.

Making the Most of Consultation

Consultation will vary depending on the Federal agency's planning process and the nature of the project and its effects.

Often consultation involves diverse participants with a variety of concerns and issues, including preservation proponents as well as those who view historic properties as impediments.

Effective consultation occurs when you:

- keep an open mind;
- state your interests clearly;
- acknowledge that others have legitimate interests, and seek to understand and accommodate them;
- consider a wide range of options; and
- identify shared goals and seek options that allow mutual gain.

Creative ideas about alternatives—not complaints—are the hallmarks of effective consultation.

HOW THE COUNCIL CAN HELP

Under Section 106 review, most harmful effects are addressed successfully by the Federal agency, the SHPO/tribe, and any other consulting parties. So, your first points of contact should always be the Federal agency and the SHPO/tribe. However, the Council can also assist with your questions and concerns.

When there is significant public controversy, or if the project will have substantial effects on important historic properties, the Council may elect to participate directly in the consultation. The Council may also decide to get involved if important policy questions are raised or if there are issues of concern to Indian tribes or Native Hawaiian organizations.

Whether the Council becomes involved in consultation or not, you may contact the Council to express your views or to request guidance, advice, or technical assistance. Regardless of the scale of the project or the magnitude of its effects, the Council is available to assist with dispute resolution and advise on the conduct of Section 106 decision making.

If you disagree with the Federal agency regarding which historic properties are affected by a project or how they will be impacted, contact the Council.

If you disagree with the Federal agency regarding which historic properties are affected by a project or how they will be impacted, contact the Council. Depending upon the status of the review, the Council could require reconsideration of the Federal agency's findings.

Contacting the Council: A Checklist

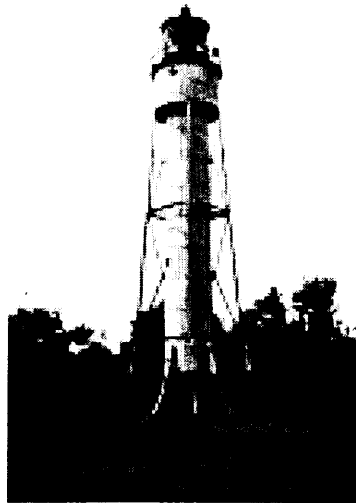
When you contact the Council, try to have the following information available:

- the name of the responsible Federal agency and how it is involved;
- a description of the project;
- the historic properties involved; and
- a clear statement of your concerns about the project and its effect on historic properties.

If you suspect Federal involvement but have been unable to verify it, or if you believe that the Federal agency or one of the other participants in review has not fulfilled its responsibilities under the Council's regulations, you can ask the Council to investigate. In either case, be as specific as possible.

WHEN AGENCIES DON'T FOLLOW THE RULES

Federal agencies must conclude Section 106 review before project funds are approved or permits issued. They must not sign contracts or take other actions that would preclude consideration of the full range of alternatives to avoid or minimize harm to historic properties before Section 106 review is complete.



The U.S. Coast Guard removed the historic lens from the 1898 Devils Island lighthouse in Wisconsin without going through Section 106 review. Concerned citizens went to court, and the lens was eventually returned to the lighthouse. (Photo courtesy of National Register of Historic Places)

If the agency acts without properly completing Section 106 review, the Council can issue a finding that the agency has foreclosed the possibility of meaningful review of the project. This means that, in the Council's opinion, the agency has failed to comply with Section 106 and therefore has not met the requirements of Federal law.

A vigilant public helps ensure that Federal agencies comply fully with Section 106.

A vigilant public helps ensure that Federal agencies comply fully with Section 106. In response to requests, the Council can investigate questionable actions and advise agencies to do what is required. As a last resort, preservation groups or individuals can litigate in order to enforce Section 106.

FOLLOWING THROUGH

Designed to accommodate project needs and historic values, Section 106 review needs strong public participation if it is to be meaningful. Section 106 review can—and does—permit the public to influence how Federal actions affect historic properties.

By keeping abreast of Federal involvement, participating in consultation, and knowing when and whom to ask for help, you can play an active role in deciding the future of your community.

Section 106 review gives you a chance to weigh in when Federal actions will affect historic properties you care about. Seize that chance and make a difference!

CONTACT INFORMATION

Advisory Council on Historic Preservation

Office of Planning and Review
1100 Pennsylvania Ave., NW, Suite 809
Washington, DC 20004
Phone: (202) 606-8503
Fax: (202) 606-8647
E-mail: achp@achp.gov
Web site: www.achp.gov

The Council's Web site includes a "Users Guide to Section 106 Review" and contact information for Federal agencies, SHPOs, and tribes.

The Council's Denver office handles most Section 106 reviews in the western States:

12136 West Bayaud Ave., Suite 330
Lakewood, CO 80228
Phone: (303) 969-5110
Fax: (303) 969-5115

**National Conference of State Historic
Preservation Officers**

444 N. Capitol St., NW, Suite 342
Washington, DC 20001-1512
Phone: (202) 624-5465
Fax: (202) 624-5419
Web site: www.sso.org/ncshpo

**National Association of Tribal Historic
Preservation Officers**

1411 K St., NW, Suite 700
Washington, DC 20005
Phone: (202) 628-8476
Fax: (202) 628-2241

National Park Service

Heritage Preservation Services
1849 C St., NW, NC-330
Washington, DC 20240
Phone: (202) 343-9573
Fax: (202) 343-3921
Web site: www2.cr.nps.gov

National Register of Historic Places
1849 C St., NW, NC-400
Washington, DC 20240
Phone: (202) 343-9536
Fax: (202) 343-1836
Web site: www.cr.nps.gov/nr

National Trust for Historic Preservation

1785 Massachusetts Ave., NW
Washington, DC 20036
Phone: (800) 944-6847 or (202) 588-6000
Fax: (202) 588-6038
Web site: www.nthp.org

The National Trust has regional offices in
San Francisco, Denver, Fort Worth, Chicago, Boston,
and Charleston.